STATE OF MICHIGAN

COURT OF APPEALS

MARIA ROSSELLI,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY and DOMINIC DIMARCO,

Defendants-Appellees,

and

DAVID SCHOCH,

Defendant.

UNPUBLISHED
February 23, 2006

No. 262868
Wayne Circuit Court
LC No. 03-308410-CD

Before: Hoekstra, PJ, and Neff and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right orders granting summary disposition to defendant Ford Motor Company ("Ford") pursuant to MCR 2.116(C)(7) and (10), and to defendant Dominic DiMarco pursuant to MCR 2.116(C)(8), in this action alleging breach of contract, promissory estoppel, and sexual harassment in violation of the Civil Rights Act ("CRA"), MCL 37.2101 *et seq*. We affirm.

Plaintiff first challenges the trial court's grant of summary disposition to Ford on her breach of contract claim. The trial court granted summary disposition to Ford under MCR 2.116(C)(7) on the basis that the claim was barred by the statute of frauds. This Court reviews de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion under MCR 2.116(C)(7), we accept the contents of the complaint as true unless the moving party contradicts the allegations with supporting documentation. *Pusakulich v City of Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). We consider any submitted admissible evidence when reviewing a motion under MCR 2.116(C)(7). *Id*. Whether the statute of frauds applies in a particular context is a question of law that is reviewed de novo. *In re Handelsman*, 266 Mich App 433, 435; 702 NW2d 641 (2005).

MCL 566.132(1)(a) states that an agreement, which by its terms is not to be performed within one year, is void unless it is in writing and signed by the party to be charged. The alleged contract at issue fell within the statute of frauds because, by its terms, it could not be performed within one year and was not signed by a representative of Ford. Plaintiff argues that the one-year provision of the statute of frauds is inapplicable here because she was an at-will employee of Ford and, thus, the contract was capable of being performed within one year. This Court has recognized that an agreement for an indefinite term of employment is generally regarded as not being within the statute of frauds. *Phinney v Perlmutter*, 222 Mich App 513, 523; 564 NW2d 532 (1997).

Plaintiff maintains the trial court erred by ruling that she was not an employee of Ford and that no at-will employment relationship existed between plaintiff and Ford. She claims the trial court should have applied the "economic reality test" in this context. However, plaintiff waived her argument by failing to timely assert it in opposition to Ford's motion for summary disposition and by maintaining in the trial court that she remained an employee of South African Motor Corporation ("SAMCOR"), which later became Ford Motor Company of Southern Africa ("FMCSA"), during her international service assignment ("ISE assignment"). See *Flint City Council v Michigan*, 253 Mich App 378, 395; 655 NW2d 604 (2002) (a party may not raise different grounds on appeal from those asserted in the trial court).[1]

Plaintiff next contends the trial court erred by granting summary disposition to Ford on her promissory estoppel claim. The trial court apparently granted Ford's motion for summary disposition on this claim pursuant to MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion under subrule (C)(10), a court considers all the admissible evidence in the light most favorable to the nonmoving party. *Id*. at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id*. at 31.

The elements of a promissory estoppel claim are: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999). To establish a

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[1] Plaintiff admitted during her interview with Ford's human resources representatives that she was a SAMCOR/FMCSA employee and was in the United States on an ISE assignment. She maintained in her amended complaint and at her deposition that she remained a SAMCOR/FMCSA employee while on her ISE assignment. Further, the documents on which plaintiff relied supported the notion that she remained a SAMCOR/FMCSA employee while on her ISE assignment. The career development plan proposed by DiMarco and David Schoch's handwritten offer both indicate that during plaintiff's ISE assignment, she would be administered as an ISE from SAMCOR/FMCSA and that she would retain her SAMCOR/FMCSA years of service during the three-year period.

claim of promissory estoppel, a promise must be clear and definite. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Whether a requisite promise existed must be determined by objectively examining the words and actions surrounding the transaction, the nature of the relationship between the parties, and the circumstances surrounding their actions. *Novak, supra* at 687.

The career development plan and handwritten offer showed that after completing the ISE assignment, plaintiff could be employed in the United States, Europe, or South Africa. In addition, plaintiff was repeatedly informed by human resources representatives that the ISE assignment was not a payroll transfer to Ford, that plaintiff would remain a SAMCOR/FMCSA employee, and that Ford would not make a commitment that plaintiff would not be repatriated to South Africa. Further, the ISE approval form explicitly stated that "[a]t the end of the three-year ISE assignment, there is no guarantee Ms. Rosselli will become an employee of the Parent Company (either via Payroll Transfer or Direct Hire)." This evidence established that no clear and definite promise of permanent employment existed.

Moreover, plaintiff's own emails to Schoch demonstrated that no promise of permanent employment existed. The first email, sent on February 1, 2001, indicated that plaintiff's husband's work visa was approved and that this fact "does change things for us." Plaintiff requested a career discussion with Schoch and indicated that she hoped that he had not "done too much about a move to Europe" and that she "hate[d] to keep changing direction, but this was an unexpected event." Plaintiff's second email, sent to Schoch on May 30, 2001, asked for Schoch's support in making the United States her "home base" and indicated that after living in the United States for 18 months, she and her family "decided that we would like to make this our home." Plaintiff further stated that if Ford was not willing to support her green card, "then I need to have some guarantee that at the very least my visa will be renewed and I will not be repatriated or sent on any new foreign assignment until such time as [her husband's] green card is approved."

Had a promise of permanent employment existed at the time plaintiff left South Africa and began her ISE assignment in the United States, then plaintiff's request that Schoch support her in making the United States her home base would not have been necessary. Further, it would have been unnecessary for plaintiff to ask for a guarantee that she would not repatriated. In any event, plaintiff's May 30, 2001, email made clear that she made her decision to reside permanently in the United States at that time, after living in the United States for approximately 18 months. Thus, plaintiff's own emails belie her argument that a promise existed at the outset of her ISE assignment. Accordingly, because plaintiff failed to establish a definite and clear promise of permanent employment with Ford in the United States, the trial court properly granted summary disposition on plaintiff's promissory estoppel claim.

Plaintiff next argues the trial court erred by granting summary disposition to DiMarco and Ford on her sexual harassment claim. We disagree. The trial court granted summary disposition to DiMarco on the basis that no individual supervisor liability existed under the CRA pursuant to *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 483; 652 NW2d 503 (2002), overruled 472 Mich 408 (2005). After the trial court's ruling, however, our Supreme Court overruled *Jager* and held that an agent of an employer may be sued individually under the CRA. *Elezovic v Ford Motor Co*, 472 Mich 408, 411, 426; 697 NW2d 851 (2005). The parties dispute whether this Court should give *Elezovic* retroactive effect and apply that decision in the

context of this case. It is immaterial whether *Elezovic* should be applied retroactively, however, because the trial court correctly determined that plaintiff failed to establish a causal connection between DiMarco's alleged sexual advances and the alleged adverse employment action.

Quid pro quo sexual harassment in the workplace may be established by demonstrating by a preponderance of the evidence that (1) the plaintiff was subjected to unwelcome sexual conduct as described in MCL 37.2103(i), and (2) the employer or the employer's agent used submission to or rejection of the conduct as a factor in an employment decision. *Rymal v Baergen*, 262 Mich App 274, 311; 686 NW2d 241 (2004). Plaintiff argues that whether her rejection of DiMarco's alleged advances was a factor in the decision not to transfer her to Ford's payroll is a question of fact for a jury. Our review of the evidence fails to yield support for plaintiff's position.

In addition to DiMarco's deposition testimony indicating that he and others questioned whether repatriating plaintiff was the "correct decision," notes taken from a meeting at which plaintiff's repatriation was discussed indicate DiMarco did not support repatriating plaintiff. The notes indicate that DiMarco questioned "are we doing the right thing?" and that he did not agree with sending plaintiff back to South Africa, felt that it was the "wrong thing" to do, and preferred to extend her ISE assignment for one year. In response to this documentary evidence, plaintiff merely presented her own suppositions that her rejection of DiMarco's advances was a factor influencing the employment decision. Plaintiff testified that she believed that DiMarco defeated her attempt to become a Ford employee because of the timing of the October 4, 2002, discussion at which DiMarco allegedly stated, "it depends how nice you are to me," and the employment decision reached shortly thereafter that a payroll transfer would not occur. However, plaintiff failed to rebut the inter-office memorandum declaring a moratorium on all ISE transfers. In opposing a motion for summary disposition under MCR 2.116(C)(10), the nonmoving party must present more than mere allegations to establish a genuine issue of material fact for trial. *Rice, supra* at 31.[2]

The trial court properly granted summary disposition to Ford under MCR 2.116(C)(10). Although the trial court granted summary disposition to DiMarco under MCR 2.116(C)(8) on the basis of *Jager, supra,* which was subsequently overruled, summary disposition to DiMarco was

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[2] Ford correctly argues that plaintiff's reliance on *Champion v Nationwide Security*, 450 Mich 702; 545 NW2d 596 (1996), is misplaced. In that case, our Supreme Court determined that a supervisor's sexual assault of an employee constituted a decision affecting the employee's employment under the CRA. *Id.* at 709-710. This case is factually distinguishable from *Champion* because in this case, the determination that plaintiff would not receive a payroll transfer did not occur commensurate with the alleged sexual assault, but years later. Thus, Ford cannot be held strictly liable under *Champion*. See *Chambers v Trettco, Inc*, 463 Mich 297, 321-323; 614 NW2d 910 (2000). Plaintiff also contends that a reasonable juror could conclude that DiMarco made an employment decision that adversely affected plaintiff's employment by failing to disclose to others his promises to plaintiff. As previously discussed, nothing other than plaintiff's own assertions indicates that any promise of permanent employment was made to plaintiff. Therefore, plaintiff's argument fails.

nevertheless proper under MCR 2.116(C)(10). This Court will not reverse a lower court decision that reaches the correct result, even if made for the wrong reason. *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 25 n 3; 703 NW2d 822 (2005).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Donald S. Owens